

United States
10
Circuit Court of Appeals

For the Ninth Circuit.

HARTLEY WALKER,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Northern Division of the
United States District Court of the
Northern District of California,
First Division.

FILED
MAR 30 1925
F. D. MONCKTON

United States
Circuit Court of Appeals
For the Ninth Circuit.

HARTLEY WALKER,
Plaintiff in Error,
vs.
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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TORMEY & O'LEARY, Martinez, Calif.,
Attorneys for Plaintiff in Error.

STERLING CARR, U. S. Attorney,
Attorney for Defendant in Error.

In the Northern Division of the United States
District Court for the Northern District of
California, First Division.

No. —

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HARTLEY WALKER,
Defendant.

INFORMATION.

At the October term of said court, in the year
of our Lord one thousand nine hundred and twenty-
four.

BE IT REMEMBERED that Sterling Carr,
United States Attorney for the Northern District
of California, by and through Gerald R. Johnson,
Special Assistant United States Attorney, for the
United States, in its behalf prosecutes in his own
proper person, comes into court on this, the 8th
day of December, 1924, and with leave of the said
Court first having been had and obtained, gives

the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath, and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof;

NOW, THEREFORE, your informant presents:
THAT

HARTLEY WALKER

hereinafter called the defendant, heretofore, to wit, on or about [1*] the 4th day of December, 1924, at 826 Sonoma Street, Vallejo, in the County of Sonoma, in the Northern Division of the Northern District of California, and within the jurisdiction of this Court, then and there being, did then and there wilfully and unlawfully have in his possession certain property designed for the manufacture of liquor, to wit:

1—40 gal. still (complete),

1—35 gal. still (complete) all in operation,

1—10 gal. still (complete),

30 gals. J. A. B. and 400 gals. mash,

then and there intended for use in violating Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act, in the manufacture of intoxicating liquor containing one-half of one per cent and more of alcohol by volume which was then and there fit for use for beverage purposes.

*Page-number appearing at foot of page of original certified Transcript of Record.

That the possession of the said property by the said defendant was then and there prohibited, unlawful and in violation of Section 25 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

AGAINST the peace and dignity of the United States of America and contrary to the form and the statute of the said United States of America in such case made and provided.

STERLING CARR,

U. S. Attorney.

GERALD R. JOHNSON,

Asst. U. S. Attorney. [2]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

C. L. Murr, being first duly sworn deposes and says: THAT

HARTLEY WALKER,

on or about the 4th day of December, 1924, at 826 Sonoma Street, Vallejo, County of Sonoma, in the Northern Division of the Northern District of California, and within the jurisdiction of this Court, did then and there wilfully and unlawfully have in his possession certain property designed for the manufacture of intoxicating liquor, to wit:

1—40 gal. still (complete),

1—35 gal. still (complete),

1—10 gal. still (complete),

30 gals. J. A. B. and 400 gals. mash,

then and there intended for use in violating Title II of the Act of October 28, 1919, to wit, the Na-

tional Prohibition Act in the manufacture of intoxicating liquor containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the possession of the said property by the said defendant at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 25 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

And affiant on his oath aforesaid further deposes and says: THAT

on or about the — day of —, 192—, at —, County of —, in the — Division of the Northern District of California, and within the jurisdiction of this Court, did then and there wilfully and unlawfully maintain a common nuisance in that the said defendant did then and there wilfully, knowingly and unlawfully manufacture on the premises aforesaid, certain intoxicating liquor, to wit:

then and there containing one-half of one per cent or more of alcohol by volume and fit for use for beverage purposes;

That the maintenance of said nuisance in the manufacture of said intoxicating liquor at the time and place aforesaid by the said defendant was then and there prohibited, unlawful and in violation of Section 21 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

[Seal]

C. L. MURR.

Subscribed and sworn to before me this 5th day of Dec. 1924.

F. M. LAMPERT,
Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Filed Dec. 8, 1924. Walter B. Maling, Clerk. By F. M. Lampert, Deputy Clerk.

[3]

SECOND COUNT.

And informant further gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath, and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof;

NOW, THEREFORE, your informant presents:
THAT

HARTLEY WALKER

hereinafter called the defendant, heretofore, to wit, on or about the 4th day of December, 1924, at
826 Sonoma Street, Vallejo

in the County of Solano, in the Northern Division of the Northern District of California, and within the jurisdiction of this Court, then and there being did then and there wilfully and unlawfully maintain a common nuisance in that the said defendant did then and there wilfully, knowingly and unlaw-

fully manufacture on the premises aforesaid, certain intoxicating liquor, to wit:

30 gallons Jackass Brandy.

then and there containing one-half of one per cent or more of alcohol by volume and fit for use for beverage purposes;

That the maintenance of said nuisance in the manufacture of said intoxicating liquor at the time and place aforesaid by the said defendant was then and there prohibited, unlawful and in violation of Section 21 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

STERLING CARR,

U. S. Atty.

GERALD R. JOHNSON,

Asst. U. S. Atty. [4]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

—————, being first duly sworn, deposes and says: THAT

on or about the — day of —, 192—, at—
County of —, in the — Division of the North-
ern District of California, and within the juris-
diction of this Court, did then and there wilfully

and unlawfully have in — possession certain property designed for the manufacture of intoxicating liquor, to wit:

then and there intended for use in violating Title II of the Act of October 28, 1919, to wit, the National Prohibition Act in the manufacture of intoxicating liquor containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the possession of the said property by the said defendant at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 25 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

And affiant on his oath aforesaid further deposes and says: THAT

HARTLEY WALKER,

on or about the 4th day of December, 1924, at
826 Sonoma Street, Vallejo,

County of Solano, in the Northern Division of the Northern District of California, and within the jurisdiction of this Court, did then and there wilfully and unlawfully maintain a common nuisance in that the said defendant did then and there wilfully, knowingly and unlawfully manufacture on the premises aforesaid, certain intoxicating liquor, to wit:

30 gallons Jackass Brandy

then and there containing one-half of one per cent

or more of alcohol by volume and fit for use for beverage purposes;

That the maintenance of said nuisance in the manufacture of said intoxicating liquor at the time and place aforesaid by the said defendant was then and there prohibited, unlawful and in violation of Section 21 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

[Seal]

JOHN F. HALL.

Subscribed and sworn to before me this 3d day of Feb., 1925.

F. M. LAMPERT,

Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Filed Feb. 3, 1925. Walter B. Maling, Clerk. By A. C. Aurich, Deputy Clerk. [5]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City of Sacramento, on Monday, the 8th day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 2498.

UNITED STATES

vs.

HARTLEY WALKER.

MINUTES OF COURT—DECEMBER 8, 1924—
ARRAIGNMENT.

The defendant being present with C. A. Russell, his attorney, was duly arraigned upon the information herein, and to said information plead not guilty. [6]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City of Sacramento, on Monday, the 2d day of February, in the year of our Lord one thousand nine hundred and twenty-five. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 2498.

UNITED STATES

vs.

HARTLEY WALKER.

MINUTES OF COURT—FEBRUARY 2, 1925—
TRIAL.

This case came on this day for trial. Mr. O'Leary, attorney for defendant, made motion for suppression of evidence, and the Court being fully advised, ORDERED said motion denied. Gerald R. Johnson, Esq., Asst. U. S. Attorney, appeared for the Government, and T. J. O'Leary, appeared

for defendant; defendant was not present. Thereupon the following named persons, viz.:

Louis Angyal,	F. H. Pierce,
Richard O. Kimbrough,	Frank S. Atkins,
Edwin W. Lightcap,	A. Van Phinney,
C. T. LaGrave,	Joseph E. Crew,
George W. Artz,	Frank M. Folsom,
A. J. Adams,	Archie E. Koletzke

twelve good and lawful jurors were, after being examined under oath, duly accepted and sworn to try the issue joined herein. ORDERED this case continued until 10 A. M. to-morrow. [7]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City of Sacramento, on Tuesday, the 3d day of February, in the year of our Lord one thousand nine hundred and twenty-five. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 2498.

UNITED STATES

vs.

HARTLEY WALKER.

MINUTES OF COURT—FEBRUARY 3, 1925—
TRIAL (CONTINUED).

This case came on regularly this day for trial, the defendant being present with T. J. O'Leary,

Esq., his attorney, and Gerald R. Johnson, Asst. U. S. Attorney, appeared for the Government. T. J. O'Leary, Esq., made motion for suppression of evidence, and the Court being fully advised, ORDERED said motion denied. ORDERED Government file amendment to complaint. Thereupon Government filed 2d count, to which count defendant plead not guilty. Mr. Johnson made the opening statement to the Court and jury. C. L. Murr, E. G. Felt and John F. Hall were sworn and testified on behalf of the Government and the Government introduced in evidence and filed its exhibits marked U. S. Exhibits 1, 2, 3, 4, 5, 6, and 7, and the Government rested. W. S. Pickett was sworn and testified on behalf of the defendant and the defendant rested. After arguments by counsel and the instructions by the Court to the jury, the jury at 10:40 o'clock A. M. retired to deliberate upon their verdict. At 10:50 o'clock A. M. the jury returned into Court and being asked if they had agreed upon their verdict, they answered in the affirmative and returned the following verdict which was ORDERED recorded, namely:

“We, the Jury, find Hartley Walker, the defendant at the bar,

As to the First Count—Guilty.

As to the Second Count—Guilty.

F. H. PIERCE,

Foreman.

ORDERED that the jury be discharged from further consideration of this case. Defendant called for judgment. ORDERED that motion for new

trial and motion in arrest of judgment be and the same is hereby denied. ORDERED that the defendant be imprisoned for the period of one (1) year in the County Jail, Sacramento County, California, and that he pay a fine in the sum of One Thousand (\$1000) Dollars; further ordered that in default of the payment of said fine that said defendant be imprisoned in said County Jail, until said fine be paid or until he be otherwise discharged in due course of law. ORDERED that the Government be allowed to withdraw exhibits and same delivered to the U. S. Attorney in open court. [8]

In the Northern Division of the United States District Court for the Northern District of California.

No. 2498.

THE UNITED STATES OF AMERICA

vs.

HARTLEY WALKER.

VERDICT.

We, the Jury, find Hartley Walker, the defendant at the bar,

As to the First Count—Guilty.

As to the Second Count—Guilty.

F. H. PIERCE,

Foreman.

[Endorsed]: Filed February 3, 1925, at 10 o'clock and 55 minutes A. M. Walter B. Maling, Clerk. By A. C. Aurich, Deputy Clerk. [9]

In the Northern Division of the United States District Court for the Northern District of California.

No. 2498.

THE UNITED STATES OF AMERICA

vs.

HARTLEY WALKER.

JUDGMENT ON VERDICT OF GUILTY.

Convicted Viol. Act Oct. 28, 1918, National Prohibition Act.

Gerald R. Johnson, Assistant United States Attorney, and the defendant with his counsel came into court. The defendant was duly informed by the Court of the nature of the Information filed on the 8th day of December, 1925, charging him with the crime of violation of the Act of Oct. 28, 1919 (National Prohibition Act), of his arraignment and plea of Not Guilty; of his trial and the verdict of the jury on the 3d day of February, 1925, to wit:

“We, the Jury, find Hartley Walker, the defendant at the bar,

As to the First Count—Guilty.

As to the Second Count—Guilty.

F. H. PIERCE,
Foreman.”

The defendant was then asked if he had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, thereupon the Court rendered its judgment;

THAT, WHEREAS, the said Hartley Walker having been duly convicted in this court of the crime of violation of the Act of Oct. 28, 1919 (National Prohibition Act);

IT IS THEREFORE ORDERED AND ADJUDGED that the said defendant be imprisoned for the period of one (1) year in the County Jail, Sacramento County, California, and that he pay a fine in the sum of One Thousand (\$1000) Dollars; further ordered that in default of the payment of said fine that said defendant be imprisoned in said County Jail, until said fine be paid or until he be otherwise discharged in due course of law.

Judgment entered this 3d day of February.

WALTER B. MALING,

Clerk.

By F. M. Lampert,

Deputy Clerk. [10]

In the Northern Division of the United States District Court, for the Northern District of California, First Division.

No. 2498.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARTLEY WALKER,

Defendant.

PETITION FOR WRIT OF ERROR.

To the Honorable, the Northern Division of the District Court of the United States for the Northern District of California.

The defendant, Hartley Walker, presents this, his petition, for a writ of error to the Northern Division of the District Court of the United States for the Northern Division of the State of California; and in support of said petition he respectfully shows.

That on or about the 3d day of February, 1925, there was rendered and entered in the above-entitled cause in the said District Court of the United States, a Judgment that said defendant, Hartley Walker, pay a fine of One Thousand (\$1000.00) Dollars and that he be imprisoned in the County Jail of Solano County, State of California, for the term of one year; that in the records thereof, had in said cause and said Judgment, and in the proceedings had prior thereunto in said cause, certain

errors were committed to the prejudice of this defendant all of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE said defendant prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors [11] so complained of, and that a transcript of the records, proceedings and papers in said cause duly authenticated may be sent to the said Circuit Court of Appeals.

Dated 24th day of February, 1925.

T. J. O'LEARY,

Attorney for Defendant and Plaintiff in Error,
Hartley Walker.

Receipt of a copy of the within petition for writ of error is hereby admitted this 24 day of February, 1925.

STERLING CARR,

U. S. Attorney,

GERALD R. JOHNSON,

Asst. U. S. Atty.,

Attorneys for _____,

[Endorsed]: Filed Feb. 24, 1925. Walter B. Maling, Clerk. By F. M. Lampert, Deputy Clerk.

[12]

In the United States District Court for the Northern Division of the State of California.

No. 2498.

UNITED STATES,

Plaintiff,

vs.

HARTLEY WALKER,

Defendant.

ASSIGNMENT OF ERRORS.

Now comes the defendant, Hartley Walker, by his attorney, and says that in the aforesaid proceedings and in the judgment made, rendered and entered therein, there is manifest error, to wit:

1. That the information under which said defendant was tried failed to state facts sufficient to constitute a public offense.

2. Said information failed to state facts sufficient to show that said defendant has violated the law or that he was guilty of any offense.

3. Said information is insufficient to sustain a conviction.

4. The first count of said information fails to state facts sufficient to constitute a public offense.

5. The first count of said information fails to state facts sufficient to show that said defendant had violated the law or that he was guilty of any offense.

6. The first count of said information is insufficient to sustain a conviction.

7. The second count of said information fails to state facts sufficient to constitute a public offense.

8. The second count of said information fails to state facts sufficient to show that said defendant had violated the law or that he was guilty of any offense. [13]

9. The second count of said information is insufficient to sustain a conviction.

10. The District Court erred in admitting evidence to show that any offense was committed by the defendant at the premises described in the search-warrant.

11. The Court erred in denying defendant's motion to suppress evidence and dismiss information in this:

(a) That the affidavit in support of the search-warrant whereby said evidence was procured and produced in this court was made upon the information and belief and not upon facts within the knowledge of the person subscribing said affidavit and that no further or other affidavit or affidavits supported said search-warrant and no affidavit or affidavits informed said person subscribing the said affidavit supporting said search-warrant of the facts therein alleged by him on information and belief and that said search and seizure of the residence of the defendant and the property of the defendant were unreasonable, unlawful and in violation of his rights under the Constitution of America.

That the following are copies of papers and documents used in support of the above motion. [14]

EXHIBIT "A."

United States of America,
Northern District of California,
County of San Francisco,—ss.

On this 3d day of December, 1924, before me, James M. Palmer, a United States Commissioner in and for the Northern District of California, personally appeared C. L. Murr, who being first duly sworn, deposes and says:

That he is and at all of the times herein mentioned was a Federal Prohibition Agent and as such makes this affidavit and presents the facts and circumstances hereinafter set out that heretofore came to the personal knowledge of and as positively known to affiant to exist. That this affidavit is made for the purpose of having issued hereon and hereunder a search-warrant to search the following described premises and place, to wit: The place of Walker Hartley, located 826 Sonoma Street, Vallejo, County of Solano, State of California, where affiant is informed, believes and therefore alleges that a fraud is being committed upon the United States Government in this; that there is unlawfully located on said place property designed for the use and manufacture of intoxicating liquor contrary to the National Prohibition Act, to wit, *on* or more stills.

That in and upon the aforesaid premises and place and on or about the — day of —, 1924, intoxicating liquor as defined by Section 1 of Title II of the Act of October 28, 1919, known as the Na-

tional Prohibition Act, containing one-half of one per centum *ore* more of alcohol by volume and fit for use for beverage purposes, was then and there and now are kept, sold, possessed and *barted*, in violation of Title II of the said National Prohibition Act, and particularly in violation of sections 3 and 21 of said Title II. [15]

That it will be necessary to enter the said premises and places to search the same and every part thereof in order to secure the said intoxicating liquor therein for the United States Government and that it will be impossible to secure the same or any part thereof without the aid and use of a search-warrant.

WHEREFORE, affiant applied for and prays that a search-warrant to enter the said premises and place and therein to search for the said intoxicating liquor be issued pursuant to the statute in such cases made and provided.

C. L. MURR.

Subscribed and sworn to before me this 3d day of December, 1924.

JAMES M. PALMER,
United States Commissioner in and for the North-
ern District of California. [16]

To the Federal Prohibition Director in and for the
State of California and to his Assistants,
Agents and Inspectors and Any or Either of
Them: GREETING:

WHEREAS, C. L. Murr, a Federal Prohibition Agent, was as such Agent on the 3d day of Decem-

ber, 1924, by me, James M. Palmer, as United States Commissioner in and for the Northern District of California, at San Francisco, California, first duly sworn, and by me as such Commissioner examined on his oath as to all the facts and circumstances personally known to said Agent, respecting the violations of the Act of October 28, 1919, known as the "National Prohibition Act" and referred to in the affidavit hereto attached, and

WHEREAS, the said Agent thereafter and heretofore, to wit, on the said last-mentioned date made and filed with me as such commissioner his affidavit, which said affidavit is hereto attached marked Exhibit "A" and by reference made a part hereof to all intents and purposes the same as if herein this warrant set out in full;

AND WHEREAS, the said examination and affidavit was had and made for the purpose of having issued and thereunder and thereon a search-warrant to search the premises described in said affidavit for the property mentioned and described therein; and

WHEREAS, from the said examination and facts set out in said affidavit, I, James M. Palmer, as such Commissioner, being thereupon and therefrom satisfied of the existence of the grounds of the application and that there is probable cause to believe that the grounds of and upon which the application is based do exist, I find that there is probable cause for the issuance of this search-warrant; that the particular grounds and probable cause for the issuance of this search-warrant are

the facts and circumstances set out in the affidavit of C. L. Murr, hereto attached, and made a part hereof as hereinabove set out.

NOW, THEREFORE, pursuant to Section 25 of Title II of the said [17] National Prohibition Act, you are hereby authorized and empowered to enter the premises and place mentioned, referred to and described in said affidavit, and every part thereof, in the day or night time and to thoroughly search the same for the following described property, to wit: intoxicating liquor, to wit: alcohol, jackass brandy, corn whiskey, wine of pepsin, neuropin, pepsin rennin, fermented grape juice, brandy, wine, whiskey, rum, gin, beer, ale, porter, sherry wine, port wine, and spirituous, vinous malt and fermented liquors, liquids and compounds by whatever name called, containing one-half of one per centum or more of alcohol and fit for use for beverage purposes, stills, worms, coils, mashes, goosenecks, hydrometers, essences, caramel, coloring materials, boilers, and if found to seize the same and take it into your possession to the end that the said property may be thereafter dealt with according to law, and hereof to make due return with written inventory of the property taken by you or any or either of you, within ten days as required by law.

WITNESS my hand and official seal this 3d day of December, 1924.

[Seal]

JAMES M. PALMER,
United States Commissioner in and for the North-
ern District of California. [18]

In the United States District Court for the Northern Division of the State of California.

UNITED STATES

vs.

HARTLEY WALKER,

Defendant.

NOTICE OF MOTION.

You will please take notice that on Monday, February 2d, at the hour of ten o'clock A. M. of said day, in the courtroom of the above-entitled court, the defendant above named will move the above-entitled court for an order to dismiss the information on file on the grounds that the search was void and unlawful. Said motion will be based upon the affidavit of the defendant, a copy of which is attached, the search-warrant and papers on file and oral testimony.

TORMEY & O'LEARY,
Attorneys for Defendant. [19]

In the United States District Court for the Northern Division of the State of California.

UNITED STATES

vs.

HARTLEY WALKER,

Defendant.

AFFIDAVIT OF HARTLEY WALKER.

State of California,
County of Contra Costa,—ss.

Hartley Walker, being first duly sworn, deposes and says that he is the defendant in the above-entitled action; that on or about the 4th day of December, 1924, his residence at 826 Sonoma Street, in the City of Vallejo, County of Solano, State of California, was searched by Federal Prohibition Enforcement Officers who were then and there acting and made search of said premises under and by virtue of a certain search-warrant issued by James M. Palmer, United States Commissioner, in and for the Northern District of California, and which said search-warrant was issued on the particular grounds and probable cause set forth in the affidavit of one C. L. Murr, which is attached to said search-warrant and made a part thereof.

That said search-warrant and said affidavit thereto attached are hereby referred to and made a part hereof; that the facts set forth in said affidavit are therein alleged on information and belief and not upon facts within the knowledge of the affiant executing said affidavit.

Affiant therefore avers that said search-warrant issued without legal authority and the issuance of said search-warrant was an illegal act and that the premises of said affiant were searched without authority of law and in violation of his rights un-

der the Constitution of the United States of America.

HARTLEY WALKER.

Subscribed and sworn to before me this — day of January, 1925.

[Notarial Seal]

_____,
Notary Public in and for the County of Contra Costa, State of California. [20]

12. That the Court erred in admitting evidence as to the first count of said information to show that the defendant had committed any offense at 826 Sonoma Street, Vallejo, Solano County, in this, that No. 826 Sonoma Street, Vallejo, County of Sonoma, is the place referred to in said first count of said information where the acts complained of in said count were committed and not 826 Sonoma Street, Vallejo, County of Solano.

13. That said Court in admitting evidence as to second count to show that the defendant had committed any offense at 826 Sonoma Street, Vallejo, Solano County, in this, that No. 826 Sonoma Street, County of Solano, is the place referred to in said second count where said acts complained of therein were committed, and not 826 Sonoma Street, Vallejo, County of Solano.

14. The District Court erred in entering said judgment and imposing sentence upon the verdict of guilty in the matter and form as done.

15. The District Court erred in pronouncing judgment upon said verdict.

T. J. O'LEARY,
Attorneys for Defendant and Plaintiff in Error,
Hartley Walker.

Receipt of a copy of the within the assignment of errors is hereby admitted this 24th day of February, 1925.

STERLING CARR,
U. S. Atty.,
GERALD R. JOHNSON,
Asst. U. S. Atty.,
Attorneys for _____.

[Endorsed]: Filed Feb. 24, 1925. Walter B. Maling, Clerk. By F. M. Lampert. [21]

In the Northern Division of the United States
District Court for the Northern Division of
California, First Division.

No. 2498.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HARTLEY WALKER,
Defendant.

BILL OF EXCEPTIONS.

BE IT REMEMBERED that the above-entitled cause coming on for hearing on Monday, February

(Testimony of C. L. Murr.)

2d, 1925, at the hour of two o'clock P. M., before the Hon. John S. Partridge, Judge of said court, and a jury duly empaneled and sworn, on a plea of Not Guilty duly made and entered in open court, and the defendant being present in open court personally with his counsel, the following proceedings were had.

Present: GERALD R. JOHNSON, Esq., Asst. District Attorney for the U. S. Government;

T. J. O'LEARY, of Messrs. TORMEY & O'LEARY of Martinez, Calif., for the Defendant.

(After the impaneling of the jury and they being duly sworn to try said cause, the same was continued until the following morning at 10 o'clock A. M.)

SESSION OF TUESDAY, FEBRUARY 3d, 1925,
10 o'clock A. M.

(Court met pursuant to adjournment, and the following proceedings were had.) [22]

TESTIMONY OF C. L. MURR, FOR THE
GOVERNMENT.

C. L. MURR, being called as a witness on behalf of the Government, was first duly sworn by the Clerk and testified as follows:

Direct Examination.

(By Mr. JOHNSON.)

Mr. O'LEARY.—In addition to the motion made

(Testimony of C. L. Murr.)

yesterday morning, supported by the introduction of the search-warrant and by the introduction of the affidavit of the defendant; I wish the record to show also that the property which was searched is not the property described in the search-warrant, and therefore—

The COURT.—That motion is answered by the recent decision of the Court of Appeals. Motion denied.

(To which ruling of the Court the defendant by his counsel then and there in open court duly accepted.)

Mr. JOHNSON.—Q. What is your name?

A. C. L. Murr.

Q. Mr. Murr, are you a Federal Internal Revenue Agent? A. Yes, sir.

Q. Were you such on December 4th, 1924?

A. Yes, sir.

Q. Where was your post of duty on December 4th, 1924? A. Sacramento, Calif.

Q. Sacramento, Calif.? A. Yes, sir.

Q. Did you have occasion on December 4, 1924, to visit the place of Hartley Walker, No. 826 Sonoma Street? A. Yes, sir; I did.

Q. Will you tell the Court and jury what occurred on that day, Mr. Murr?

A. On December 4, 1924, on Thursday morning at 9 A. M.—I will take it back,—it was 11 A. M., we raided the place of Mr. Walker at 826 Sonoma Street, Vallejo, Solano County. We entered the place with a search-warrant. Agent Hall had the

(Testimony of C. L. Murr.)

search-warrant and went to the front door. Agent Felt [23] and myself went to the back door to take care of around of the back of the house. In a little addition built on to this house stood Mr. Walker and his wife. Mr. Walker was looking out of a window, his arms folded. He had three stills in the little room he stood in, going full blast. Mr. Walker's wife was also in this place with him. The doors were all open and we stepped to the door and could see the stills in full operation. We stepped in and then told Mr. Walker he was under arrest, and after getting a little light in the room—it was kind of dark there—we saw 400 gallons of mash and—

Q. Pardon me a moment. Was that in a big barrel, this mash? A. In several barrels.

Q. Several barrels,—I see,—all right.

A. He also had 30 gallons of jackass which was made, and the jackass was coming out of the stills at the time. Two of those stills were hooked together; the large one was hooked into the small one there. (Indicating exhibits afterward marked.)

Q. You mean this one?

A. He would use two. That is to accelerate it; he was giving it a double run, running from the big one into the small one, and from the small one through his coil. That gives a high proof,—a double run, altogether.

Q. This is the small one and this is the large one, Mr. Murr? A. Yes, sir.

(Testimony of C. L. Murr.)

Q. What is the approximate capacity of this one, do you know?

A. It is about 50 gallons still; Mr. Walker told us at the time it was supposed to hold 40 gallons.

Q. Who owned the stuff,—did he tell you?

A. He claimed the ownership.

Q. Did his wife claim he owned it, too?

A. Yes, sir; she did; and we also took a sample of the mash and jackass. [24]

Q. That is a sample of the jackass?

A. A sample of the mash.

Q. And that is a sample of the jackass?

A. Yes.

Mr. O'LEARY.—Objected to as incompetent, irrelevant and immaterial; and we make the further objection to the testimony that as to what Walker's wife said is hearsay.

The COURT.—Q. Was she present?

A. Yes, sir.

Mr. JOHNSON.—Q. And was the defendant present?

A. Mr. Walker and his wife were both present.

The COURT.—Overruled.

(To which ruling of the Court the defendant by his counsel then and there in open court duly excepted.)

Mr. JOHNSON.—Q. What is this?

A. That is a sample of the gin Mr. Walker was making.

Q. That is a sample of the gin? A. Yes, sir.

Q. What is this? A. That is the same.

(Testimony of C. L. Murr.)

Q. That is what you refer to as the coil in there?

A. Yes, sir; that is the coil. (Referring to Government exhibits afterward offered.)

Q. Is this also another coil? A. Yes, sir.

Q. Was it just in that condition when you got it?

A. Outside of being set up, it was the same exactly.

Q. You haven't washed them off or anything?

A. No; we never do that. I think some of the jackass is still in the coil there (indicating).

The COURT.—Q. Does the bootlegger ever wash them? A. I don't believe so.

Mr. JOHNSON.—Q. Did Mr. Walker ever tell you that he had been running this still?

A. Yes, sir; he did; he mentioned to Agent Hall that he had been operating quite a while; it seems to me it was something like three years.

Q. Three years?

A. Three years; three or four years.

Q. In what part of the residence district is this?
[25]

A. It is a very good district if not as good as any in Vallejo. It is near the Y. M. C. A.—right opposite the Y. M. C. A. and on the other side is a big new Methodist church, and above there was another large church,—an Episcopal church, I think it is;—a very good district.

Q. Have you had a large number of complaints about this place?

A. Yes, sir; We have had numerous complaints.

(Testimony of C. L. Murr.)

Mr. O'LEARY.—Objected to as incompetent, irrelevant and immaterial, and as to the reports a violation of the best evidence rule.

The COURT.—You refer to complaints.

Mr. JOHNSON.—Complaints which he had.

The COURT.—It would be a violation of the best evidence rule, if they were in writing.

Mr. O'LEARY.—It is a violation of the hearsay rule.

The COURT.—Q. Were those complaints in writing? A. No.

The COURT.—He is merely charged with possession. I think the objection is good.

Mr. JOHNSON.—He is charged with possession of materials used for manufacturing.

Mr. O'LEARY.—Just possession.

The COURT.—There is only one count here.

Mr. JOHNSON.—Your Honor, I would like to have an opportunity to file another count in this matter. There has been an oversight.

Mr. O'LEARY.—On behalf of the defendant we interpose an objection, your Honor.

Mr. JOHNSON.—We can try him on this count, and there is nothing to prevent his being tried on another count.

The COURT.—I don't want to try him twice. I will permit you to [26] file another count.

(To which ruling of the Court the defendant by his counsel then and there in open court duly excepted.)

Mr. JOHNSON.—That is all.

(Testimony of C. L. Murr.)

Cross-examination.

(By Mr. O'LEARY.)

Q. Mr. Murr, on any other date, prior to the date you searched the Hartley Walker place at 826 Sonoma Street, Vallejo, had you procured a search-warrant before,—to search it on another occasion?

The COURT.—You need not answer that question. I have passed on that proposition.

Mr. O'LEARY.—Q. Where did you first see the stills in operation, at the time you went there?

A. Yes, sir; every one of them.

Witness excused.

TESTIMONY OF E. G. FELT, FOR THE GOVERNMENT.

E. G. FELT, being called as a witness on behalf of the Government, was first duly sworn by the Clerk and testified as follows:

Direct Examination.

(By Mr. JOHNSON.)

Q. What is your name? A. E. G. Felt.

Q. Mr. Felt, were you a Federal Prohibition Officer on December 4, 1924? A. I was.

Q. Where was your post of duty, Mr. Felt?

A. Sacramento.

Q. Sacramento. Did you ever have occasion to visit the premises of Mr. Hartley Walker, located at No. 826 Sonoma Street, Vallejo? A. I did.

(Testimony of E. G. Felt.)

Q. Will you just tell the jury and the Court here the circumstances of your visit?

A. On December 4, at about 11 A. M.—in the morning,—we went and entered these premises by virtue of a search-warrant. Agent Hall had a search-warrant and went to the front door and Agent Murr and I went to the rear, and the [27] building is in the shape of a “L” kind of—

Q. In the shape of an “L”?

A. Yes, sir.

Q. Like this (indicating)?

A. Yes, sir. A lean-to was built on to the back of the building; there were no connecting doors at all from the front of the building to the “L”; you had to go to the sidewalk; to enter the main building you had to go thru a door.

Q. I see.

A. And we could see these stills running there and all in operation.

Q. All in operation?

A. Yes, sir.

Q. By operations you mean the steam was coming from them?

A. There was fire under them and mash in the stills and the jackass was coming from the coils.

Q. Where do they put the mash—in here?

A. Yes, sir.

Q. What comes out of the opening here?

A. Vapor.

Q. Vapor comes out of there?

A. Yes, sir.

Q. And then the vapor is—

A. A little worm is connected with that union.

Q. It is connected this way?

(Testimony of E. G. Felt.)

A. Yes, sir (indicating). Then the vapor comes out of here in this worm here. This condenses and gives out liquor.

Q. Gives out alcohol here?

A. Whatever you have a mind to call it—jackass.

Q. Down here? A. Yes, sir.

Q. Where does it drop to?

A. Into a container of some kind.

Q. Into a container of some kind? Now, Mr. Walker was in charge of these stills at the time?

A. He was present at the time.

Q. He was present at the time? A. Yes, sir.

Q. Did Mr. Walker tell you he owned these stills? A. He did.

Q. Was Mrs. Walker present at the time?

A. She was.

Q. Did she also state to you in the presence of Mr. Walker who owned these stills? A. She did.

[28]

Mr. O'LEARY.—The same objection,—it is incompetent, irrelevant and immaterial; and also hearsay.

The COURT.—Overruled.

(To which ruling of the Court the defendant by his counsel then and there in open court duly excepted.)

Mr. JOHNSON.—Q. Did Mr. Walker ever state to you how long he had been operating these stills?

A. I think he did say he had been operating them quite a while; what she said and how long I am not sure.

(Testimony of E. G. Felt.)

Mr. O'LEARY.—Objected to as incompetent, irrelevant and immaterial.

Mr. JOHNSON.—Was anything found besides the stills, Mr. Felt?

A. Yes, sir; we found gin and mash, and a little corn, I believe,—corn—sugar there.

Q. Is that a sample of the mash here?

A. Yes, sir.

Q. What is this sample of, Mr. Felt?

A. That is gin.

Mr. JOHNSON.—Is there any juror who *would* to smell it?

Q. Did you ever smell that before?

Mr. JOHNSON.—Is there any juror who would like to smell it?

A JUROR—I think so; what is it?

Mr. JOHNSON.—It is called “gin”.

Q. Now, Mr. Felt, is there anything more which you can tell either the jury or the Court about this case? A. No, sir; I believe that is all.

Q. You are sure these stills were all in operation and they were in the control and custody of Mr. Walker? A. Absolutely.

Cross-examination.

(By Mr. O'LEARY.)

Q. Mr. Felt, will you describe the premises at 826 Sonoma Street, Vallejo?

A. Why it was a square stucco house, a two-story house as near as I remember. [29]

Q. An apartment house. 826 is the address of an apartment house? A. Yes, sir.

(Testimony of E. G. Felt.)

Q. There are several apartments there?

A. That I don't know. I was just in the part that Hartley Walker was living in.

Q. You were operating that day by virtue of a search-warrant you had at the time?

A. Nothing else.

Q. You didn't see any stills in operation at all on the property of the defendant by virtue of the search-warrant; is that true?

A. That is true.

Mr. JOHNSON.—Q. Mr. Felt, as a matter of fact, you saw these stills thru an open doorway, didn't you?

A. Before we entered the doorway.

Mr. O'LEARY.—Objected to.

The COURT.—All that is immaterial entirely. The Court has already passed on the circumstances, and the only thing involved here now is, first: Were there stills there which belonged to the defendant? And, second, Was he manufacturing jackass brandy or whatever the alcoholic liquor is, if it is alcoholic in character? The other matters are entirely immaterial. Objection sustained.

Witness excused.

Mr. JOHNSON.—Your Honor, please, I have the second count drawn now.

TESTIMONY OF JOHN F. HALL, FOR THE
GOVERNMENT.

JOHN F. HALL, being called as a witness on behalf of the Government, was first duly sworn and testified as follows:

Direct Examination.

(By Mr. JOHNSON.)

The COURT.—That (referring to second count) may be filed.

Mr. O'LEARY.—That is over our objection.

The COURT.—I think the defendant at some stage of the proceeding [30] ought to plead to it. Just let him plead.

Mr. O'LEARY.—I will waive the reading of it.

The CLERK.—(To the defendant.) Do you plead Guilty or Not Guilty?

Mr. O'LEARY.—Not Guilty.

Mr. JOHNSON.—Q. On December 4, 1924, were you a Federal Internal Revenue Agent?

A. Yes, sir.

Q. Did you have any occasion on December 4, 1924, to visit the premises of Mr. Hartley Walker at No. 826 Vallejo Street? A. Yes.

Q. Sonoma Street, Vallejo? A. Yes, sir.

Q. What did you find, if anything, there, Mr. Hall? A. We found three stills in operation.

Q. You found three stills in operation. Are these the same stills you found in operation? (Referring to stills afterward received in evidence as Government's exhibits.) A. Yes, sir.

(Testimony of John F. Hall.)

Q. Were they all running at the time?

A. Yes, sir.

A. Was Hartley Walker in charge and control of these stills? A. Yes, sir.

Q. What else, if anything, did you find there, Mr. Hall?

A. We found four hundred gallons of mash, for the making of this, and about 30 gallons of—

A. Is this a sample of it?

A. That is a sample of the mash contained in the place and taken by me at the time; and about 30 gallons of jackass brandy.

The COURT.—Q. What they call “gin”?

A. It is simply jackass brandy. We term everything JAB. It would take a chemical analysis to prove it was gin and not jackass brandy.

Mr. JOHNSON.—Q. This is the stuff which comes out of the stills? A. Yes, sir. [31]

Q. They call it “gin”?

A. They call it “gin” in Vallejo.

Q. That is another sample?

A. Yes, sir. We could not find but two larger bottles and we took two samples; and we took a sample of the 30 gallons in case one sample should become broken.

A. Did Mr. Walker state he owned these things?

A. Yes.

Q. Did his wife also say that Mr. Walker owned these in your presence?

A. She didn't state he owned them, but made

(Testimony of John F. Hall.)

the remark which led me to believe he did own them.

Q. What did she say?

A. She said she was glad we got him, because he had been operating nearly 4 years; and as soon as he got a few dollars he went out and blew it, and she didn't get any compensation from it at all.

Q. What is the nature of the residence district where these stills are located?

A. It is on the edge of the better residence district of Vallejo, close to the business district.

Q. You could smell this place?

A. We could after we entered the walk leading to the premises,—then we could.

Q. All around the neighborhood? A. Yes.

Cross-examination.

(By Mr. O'LEARY.)

Q. You didn't smell the odor all around the premises or all around the neighborhood?

A. No; I didn't.

Q. And you were operating thru a search-warrant? A. Yes.

Q. And were on the premises of the defendant before you saw the still? A. Yes, sir.

Witness excused.

(Close of Government's case.)

The COURT.—Is the chemist here? I don't think you have established what the liquid is.

Mr. JOHNSON.—I don't think there is any

necessity for testing it, unless counsel for the defendant is going to force me to.

The COURT.—Mr. O'Leary, perhaps you will admit that is jackass [32] brandy of illegal alcoholic content.

Mr. O'LEARY.—I am going to object to its being introduced, generally.

The COURT.—But as to the alcoholic content.

Mr. O'LEARY.—I will admit its alcoholic content is more than one-half of one per cent.

Mr. JOHNSON.—That is all that is necessary. That is the Government's case.

The COURT.—You desire to offer these in evidence.

Mr. JOHNSON.—Yes; if I may. May this be termed Government's Exhibit 1 in evidence? I think it is a 30-gallon still. The 40-gallon still will be Government's Exhibit No. 2 in evidence. The 10-gallon still will be Government's Exhibit No. 3 in evidence. The coil will be Government's Exhibit No. 4 in evidence; another coil will be Government's Exhibit No. 5 in evidence. One gallon of mash will be Government's No. 6 in evidence. The bottle of jackass will be Government's Exhibit No. 7 in evidence.

Mr. O'LEARY.—To which, if the Court please, the defendant objects to the same being received in evidence as incompetent, irrelevant and immaterial and not binding on the defendant there being no foundation laid for the introduction of the same in evidence of any or all of said exhibits; and no

(Testimony of W. S. Pickett.)

proof has been put in to show it was the property of the defendant.

The COURT.—The objection is overruled. The same are admitted.

(To which ruling of the Court the defendant by his counsel then and there in open court duly excepted.)

(Said seven exhibits so offered were received by the Court and marked by the Clerk as requested by the counsel for the Government.)

Whereupon the defendant to sustain his plea of “Not Guilty,” introduced the following evidence
[33]

TESTIMONY OF W. S. PICKETT, FOR DEFENDANT.

W. S. PICKETT, being called as a witness on behalf of the defendant, was first duly sworn by the clerk and testified as follows:

Direct Examination.

(By Mr. O’LEARY.)

Q. What is your name? A. W. S. Pickett.

Q. Where do you reside? A. Vallejo.

Q. How long have you resided there?

A. Seven years.

Q. What is your occupation? A. Electrical.

Q. Where do you live there?

A. Now I live at 92 B Street.

Q. Did you ever live at the residence of Hartley Walker—the apartment house of Hartley Walker?

A. Yes, sir.

(Testimony of W. S. Pickett.)

Q. How many apartments are in that house?

A. Six.

Q. You were a tenant in one apartment; how long did you remain there? A. About 5 months.

Q. Was a search-warrant ever served upon you at any time?

A. When I—to start at the beginning. One night I came home, having left work at 5 o'clock, getting there about 5:30. I walked in the door; and as I walked in why, I shut the door and locked it, as I usually do; and I went out into the kitchen and left some groceries lying on the table. I heard a knock at the door; and I lifted the curtain back there, and there was someone I didn't know, and I didn't want them in there, and I went back into the kitchen and as I got back into the kitchen my door busted open.

Q. How long did you say you resided in one of the apartments of the Walker flat or apartment house? A. About 5 months.

Q. About 5 months. Was there anything which called your attention to a still being operated on the premises there? A. No, sir.

Q. Did you see the place the still was recovered from by the [34] officers after they recovered it; did you see the premises? A. Yes, sir.

Q. You did go in there? A. Yes, sir.

Q. Is that place so located with reference to the street it could be seen from out on the street that there were stills in operation there?

(Testimony of W. S. Pickett.)

A. Not that I know of. I never saw anything around there at all.

Mr. JOHNSON,—No questions.

Mr. O'LEARY.—The defense rests. [35]

CHARGE OF THE COURT TO THE JURY.

Gentlemen: The District Attorney for this district has presented here an information against this defendant which contains two counts or charges. It will be necessary for you to find him guilty or not guilty upon both of these counts or charges. You may find him guilty on both or you may find him guilty on one and not guilty on the other or you may find him not guilty on both, as to you the facts may seem to justify. The filing of the information however, is not any evidence whatsoever against this defendant. It is a mere form or charge by which, under the law, the duly constituted officers of the law present the matter for the determination of this court and for final adjudication by you.

On the contrary, gentlemen, this defendant is presumed to be innocent; and that presumption of innocence attends him at all stages of the proceedings until the Government has overcome that presumption by evidence which satisfies your minds to a moral certainty and beyond all reasonable doubt. A mere preponderance of the evidence is not sufficient in a criminal case.

A moral certainty, gentlemen, is that condition or feeling in the mind which ordinarily satisfies

an unprejudiced man,—and, as far as reasonable doubt is concerned it, of course, does not mean every doubt, because it is rare indeed that such a case can be presented. A reasonable doubt is that kind of doubt which would influence you in the important affairs of your own life. Therefore, if you are convinced from the evidence beyond a reasonable doubt that this defendant here had these stills in his possession, the jackass brandy and the other matters which have been testified to, then you will find him guilty of possession.

At the same time, gentlemen, if you find that he was actually manufacturing or had been actually manufacturing jackass brandy [36] or other alcoholic liquors, containing more than one-half of one per cent by volume and fit for beverage purposes, then you will find him guilty upon the other count, which is technically a nuisance,—that is to say, maintaining a place where alcoholic liquor is manufactured.

The defendant, gentlemen, has not taken the stand in his own behalf. That is his privilege. Under our Constitution no man can be compelled to testify, unless he so desires; and I want to warn you that, you are not to consider his failure to testify in any manner as evidence against him. You will entirely disregard that.

I want to warn you also, gentlemen, that this is a prohibition case that you gentlemen have tried. As far as you and I are concerned, our private opinions with regard to prohibition and the Prohibition Act have nothing to do with this case. You

and I have a perfect right to in public or in private—in any place else—to have such opinions as we may think fit in regard to this law; and we have the right furthermore to maintain those opinions and to act as we see best, toward either the tightening up of this law, its amelioration or appeal; but no echo of that, gentlemen, can come into your consideration of this case in the jury-room. You and I are sworn to uphold the law as it is and not as we think it ought to be. Therefore, whether you are for or against the law for the enforcement of prohibition you will judge this case entirely—when in your jury-room—according to the facts and nothing else. It requires an unanimous verdict at your hands.

Any exceptions?

Mr. O'LEARY.—No exceptions. [37]

In the Northern Division of the United States
District Court for the Northern Division of
California, First Division.

No. 2498.

UNITED STATES OF AMERICA

vs.

HARTLEY WALKER,

Defendant.

ORDER ALLOWING BILL OF EXCEPTIONS.

The defendant's bill of exceptions in the above-entitled matter having been filed on the 25th day of February, 1925, and having been presented to

the Court and counsel for the Government, the same is hereby allowed and settled.

Dated: February 27th, 1925.

JOHN S. PARTRIDGE,

Judge.

[Endorsed]: Filed Feb. 27, 1925. Walter B. Maling, Clerk. By F. M. Lampert, Deputy Clerk.

[38]

CERTIFICATE OF CLERK OF UNITED STATES DISTRICT COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, Northern Division, do hereby certify that the foregoing 38 pages, numbered from 1 to 38, inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of United States of America vs. Hartley Walker, No. 2498-Criminal, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on appeal.

I further certify that the cost of preparing and certifying the foregoing transcript on appeal is the sum of Eleven and 00/100 Dollars, and that the same has been paid to me by the attorneys for the defendant herein.

Annexed hereto is the original citation and original writ of error issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 12th day of March, A. D. 1925.

[Seal]

WALTER B. MALING,

Clerk.

By F. M. Lampert,

Deputy Clerk. [39]

WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America,

To the Honorable, the Judges of the District

Court of the United States for the Northern

District of California, Northern Division.

GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Hartley Walker, plaintiff in error, and The United States of America, defendant in error, a manifest error hath happened, to the great damage of the said Hartley Walker, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United

States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM H. TAFT, Chief Justice of the United States, the 24th day of February, in the year of our Lord one thousand nine hundred and twenty-five.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

By F. M. Lampert,
Deputy Clerk.

Allowed by:

JOHN S. PARTRIDGE,
United States District Judge. [40]

[Endorsed]: No. 2498. United States District Court for the Northern District of California, Northern Division. Hartley Walker, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed Mar. 2, 1925. Walter B. Maling, Clerk. F. M. Lampert, Deputy Clerk.

Service of the within writ of error by copy admitted this 28th day of Feb., 1925.

STERLING CARR,
Attorney for Deft. in Error.

RETURN TO WRIT OF ERROR.

The answer of the Judges of the District Court of the United States for the Northern District of California to the within writ of error.

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals for the Ninth Circuit within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 25th day of February, A. D. 1925, duly lodged in the case in this court for the within named defendant in error.

By the Court:

[Seal] WALTER B. MALING,
Clerk U. S. District Court, Northern District of
California.

By F. M. Lampert,
Deputy Clerk. [41]

CITATION ON WRIT OF ERROR.

United States of America,—ss.

The President of the United States, To United States of America, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, Northern Division, wherein Hartley Walker is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected. and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PARTRIDGE, United States District Judge for the Northern District of California, this 24th day of February, A. D. 1925.

JOHN S. PARTRIDGE,
United States District Judge. [42]

[Endorsed]: No. 2498. United States District Court for the Northern District of California. Hartley Walker, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation

on Writ of Error. Filed Mar. 2, 1925. Walter B. Maling, Clerk. By F. M. Lampert, Deputy Clerk.

Service of the within citation by copy admitted this 28th day of Feb., 1925.

STERLING CARR,
Attorney for Deft. in Error.

[Endorsed]: No. 4533. United States Circuit Court of Appeals for the Ninth Circuit. Hartley Walker, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Northern Division of the United States District Court of the Northern District of California, First Division. Filed March 20, 1925.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.